



House of Representatives

General Assembly

File No. 338

February Session, 2016

Substitute House Bill No. 5295

House of Representatives, March 31, 2016

The Committee on Banking reported through REP. LESSER of the 100th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING DEBIT CARD FRAUD AND PENALTIES FOR COLLECTION OF RENTAL PAYMENTS ON FORECLOSED PROPERTY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 53a-128a of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective from passage*):

3 As used in this section and sections 53a-128b to 53a-128i, inclusive,
4 as amended by this act:

5 (a) "Cardholder" or "holder of a card" means the person named on
6 the face of a [credit] payment card to whom or for whose benefit the
7 [credit] payment card is issued by an issuer or, in the case of a
8 payment card that does not bear the name of a person on its face, the
9 person who lawfully acquired the payment card;

10 (b) "Credit card" means any instrument or device, whether known
11 as a credit card, as a credit plate, or by any other name, issued with or
12 without a fee by an issuer for the use of the cardholder in obtaining

13 money, goods, services or anything else of value on credit;

14 (c) "Debit card" means any card, code, device or other means of
15 access, or any combination thereof, that is issued or authorized for use
16 to debit an asset account held directly or indirectly by a financial
17 institution and that may be used by the cardholder to obtain money,
18 goods, services or anything else of value, regardless of whether the
19 card, code, device or other means of access, or any combination
20 thereof, is known as a debit card. "Debit card" includes, but is not
21 limited to, cards, codes, devices or other means of access, or some
22 combination thereof, commonly known as payroll cards and
23 automated teller machine cards. "Debit card" does not include a check,
24 draft or similar paper instrument, or an electronic representation
25 thereof;

26 (d) "Digital wallet" means a software application that is used on a
27 computer or other device, including, but not limited to, a mobile
28 device, to store digital forms of one or more payment cards that may
29 be used to obtain money, goods, services or anything else of value;

30 [(c) "Expired credit card"] (e) "Expired payment card" means a
31 [credit] payment card which is no longer valid because the term shown
32 on it has elapsed;

33 [(d)] (f) "Issuer" means the person which issues a [credit] payment
34 card, or its agent duly authorized for that purpose;

35 [(e)] (g) "Participating party" means any person or any duly
36 authorized agent of such person, which is obligated by contract to
37 acquire from another person providing money, goods, services or
38 anything else of value, a sales slip, sales draft or instrument for the
39 payment of money, evidencing a [credit] payment card transaction,
40 and from whom, directly or indirectly, the issuer is obligated by
41 contract to acquire such sales slip, sales draft, instrument for the
42 payment of money and the like;

43 (h) "Payment card" means either a credit card or a debit card;

44 [(f)] (i) "Receives" or "receiving" means acquiring possession,
45 custody or control;

46 [(g) "Revoked credit card"] (j) "Revoked payment card" means a
47 [credit] payment card which is no longer valid because permission to
48 use it has been suspended or terminated by the issuer.

49 Sec. 2. Section 53a-128b of the general statutes is repealed and the
50 following is substituted in lieu thereof (*Effective from passage*):

51 Any person who makes or causes to be made, either directly or
52 indirectly, any false statement in writing, knowing it to be false and
53 with intent that it be relied on, respecting [his] such person's identity
54 or [that] the identity of any other person or [his] such person's financial
55 condition or that of any other person, for the purpose of procuring the
56 issuance of a [credit card] payment card or loading the payment card
57 into a digital wallet, violates this section and is subject to the penalties
58 set forth in subsection (a) of section 53a-128i.

59 Sec. 3. Section 53a-128c of the general statutes is repealed and the
60 following is substituted in lieu thereof (*Effective from passage*):

61 (a) Any person who takes a [credit] payment card from the person,
62 possession, custody or control of another without the consent of the
63 cardholder or of the issuer or who, with knowledge that it has been so
64 taken, receives the [credit] payment card with intent to use it or to sell
65 it, or to transfer it to any person other than the issuer or the cardholder
66 is guilty of [credit] payment card theft and is subject to the penalties
67 set forth in subsection (a) of section 53a-128i. Taking a [credit] payment
68 card without consent includes obtaining it by conduct defined or
69 known as statutory larceny, common law larceny by trespassory
70 taking, common law larceny by trick, embezzlement, or obtaining
71 property by false pretense, false promise or extortion.

72 (b) Any person who receives a [credit] payment card that [he] such
73 person knows to have been lost, mislaid, or delivered under a mistake
74 as to the identity or address of the cardholder, and who retains

75 possession, custody or control thereof with intent to use it or to sell it
76 or to transfer it to any person other than the issuer or the cardholder, is
77 guilty of [credit] payment card theft and is subject to the penalties set
78 forth in subsection (a) of section 53a-128i.

79 (c) Any person other than the issuer who sells a [credit] payment
80 card or any person who buys a [credit] payment card from a person
81 other than the issuer violates this subsection and is subject to the
82 penalties set forth in subsection (a) of section 53a-128i.

83 (d) Any person who, with intent to defraud the issuer, a
84 participating party, or a person providing money, goods, services or
85 anything else of value, or any other person, obtains control over a
86 [credit] payment card as security for debt violates this subsection and
87 is subject to the penalties set forth in subsection (a) of section 53a-128i.

88 (e) Any person, other than the issuer, who, during any twelve-
89 month period, receives [credit] payment cards issued in the names of
90 two or more persons which [he] such person has reason to know were
91 taken or retained under circumstances which constitute [credit]
92 payment card theft or a violation of section 53a-128b, as amended by
93 this act, or subsection (c) or (d) of this section violates this subsection
94 and is subject to the penalties set forth in subsection (b) of section 53a-
95 128i.

96 (f) Any person who, with intent to defraud a purported issuer, a
97 participating party, or a person providing money, goods, services or
98 anything else of value, or any other person, falsely makes or falsely
99 embosses a purported [credit card] payment card or falsely loads or
100 causes to be falsely loaded a payment card into a digital wallet or
101 utters such a [credit] payment card is guilty of [credit] payment card
102 forgery and is subject to the penalties set forth in subsection (b) of
103 section 53a-128i. A person "falsely makes" a [credit] payment card
104 when [he] such person makes or draws, in whole or in part, a device or
105 instrument which purports to be the [credit] payment card of a named
106 issuer but which is not such a [credit] payment card because the issuer
107 did not authorize the making or drawing, or when such person so

108 alters a [credit] payment card which was validly issued. A person
109 "falsely embosses" a [credit] payment card when, without the
110 authorization of the named issuer, [he] such person completes a
111 [credit] payment card by adding any of the matter, other than the
112 signature of the cardholder, which an issuer requires to appear on the
113 [credit] payment card before it can be used by a cardholder.

114 (g) Any person other than the cardholder or any person authorized
115 by him who, with intent to defraud the issuer, a participating party, or
116 a person providing money, goods, services or anything else of value,
117 or any other person, signs a [credit] payment card, violates this
118 subsection and is subject to the penalties set forth in subsection (a) of
119 section 53a-128i.

120 Sec. 4. Section 53a-128d of the general statutes is repealed and the
121 following is substituted in lieu thereof (*Effective from passage*):

122 Any person who, with intent to defraud the issuer, a participating
123 party, or a person providing money, goods, services or anything else of
124 value, or any other person, (1) uses for the purpose of obtaining
125 money, goods, services or anything else of value a [credit] payment
126 card obtained or retained in violation of section 53a-128b, as amended
127 by this act, or a [credit] payment card which [he] such person knows is
128 forged, expired or revoked, or (2) obtains money, goods, services or
129 anything else of value by representing without the consent of the
130 cardholder that [he] such person is the holder of a specified card or by
131 representing that [he] such person is the holder of a card and such card
132 has not in fact been issued, or (3) uses a [credit] payment card obtained
133 or retained in violation of section 53a-128c, as amended by this act, or a
134 [credit] payment card which [he] such person knows is forged, expired
135 or revoked, as authority or identification to cash or to attempt to cash
136 or otherwise to negotiate or transfer or to attempt to negotiate or
137 transfer any check or other order for the payment of money, whether
138 or not negotiable, if such negotiation or transfer or attempt to negotiate
139 or transfer would constitute a violation of section 53a-128 violates this
140 subsection and is subject to the penalties set forth in subsection (a) of

141 section 53a-128i, if the value of all money, goods, services and other
142 things of value obtained in violation of this subsection does not exceed
143 five hundred dollars in any six-month period; and is subject to the
144 penalties set forth in subsection (b) of section 53a-128i, if such value
145 does exceed five hundred dollars in any such six-month period.
146 Knowledge of revocation shall be presumed to have been received by a
147 cardholder four days after it has been mailed to [him] such cardholder,
148 at the address set forth on the [credit] payment card or at [his] such
149 cardholder's last-known address. [, by registered or certified mail,
150 return receipt requested, and, if, the address is more than five hundred
151 miles from the place of mailing, by air mail.] If the address is located
152 outside the United States, Puerto Rico, the Virgin Islands, the Canal
153 Zone or Canada, notice shall be presumed to have been received ten
154 days after mailing by registered or certified mail.

155 Sec. 5. Section 53a-128e of the general statutes is repealed and the
156 following is substituted in lieu thereof (*Effective from passage*):

157 (a) Any person who is authorized by an issuer or a participating
158 party to furnish money, goods, services or anything else of value upon
159 presentation of a [credit] payment card by the cardholder, or any agent
160 or employee of such person, who, with intent to defraud the issuer, or
161 participating party, the cardholder, or any other person furnishes
162 money, goods, services or anything else of value upon presentation of
163 a [credit] payment card obtained or retained in violation of section 53a-
164 128c, as amended by this act, or a [credit] payment card which [he]
165 such person knows is forged, expired or revoked, violates this
166 subsection and is subject to the penalties set forth in subsection (a) of
167 section 53a-128i, if the value of all money, goods, services and other
168 things of value furnished in violation of this subsection does not
169 exceed five hundred dollars in any six-month period; and is subject to
170 the penalties set forth in subsection (b) of section 53a-128i if such value
171 does exceed five hundred dollars in any such six-month period.

172 (b) Any person who is authorized by an issuer or a participating
173 party to furnish money, goods, services or anything else of value upon

174 presentation of a [credit] payment card by the cardholder, or any agent
175 or employee of such person, who, with intent to defraud the issuer, a
176 participating party, the cardholder, or any other person fails to furnish
177 money, goods, services or anything else of value which [he] such
178 person represents in writing to the issuer or participating party that
179 [he] such person has furnished violates this subsection and is subject to
180 the penalties set forth in subsection (a) of section 53a-128i, if the
181 difference between the value of all money, goods, services and
182 anything else of value actually furnished and the value represented to
183 the issuer or participating party to have been furnished does not
184 exceed five hundred dollars in any six-month period; and is subject to
185 the penalties set forth in subsection (b) of section 53a-128i if such
186 difference does exceed five hundred dollars in any such six-month
187 period.

188 Sec. 6. Section 53a-128f of the general statutes is repealed and the
189 following is substituted in lieu thereof (*Effective from passage*):

190 Any person, other than the cardholder, having under [his] such
191 person's possession, custody or control two or more incomplete
192 [credit] payment cards, or possessing a purported distinctive element
193 of a [credit] payment card, with intent to complete such incomplete
194 [credit] payment cards or to utilize such purported distinctive element
195 in the production or reproduction of any [credit] payment card,
196 without the consent of the issuer, or a person having under [his] such
197 person's possession, custody or control, with knowledge of its
198 character, a distinctive element of any [credit] payment card or any
199 machinery, plates or any contrivance designed to produce or
200 reproduce instruments purporting to be the [credit] payment cards of
201 an issuer, or of any issuer in a group of issuers utilizing a common
202 distinctive element or elements in [credit] payment cards issued by all
203 members of such group, who has not consented to the production or
204 reproduction of such cards, violates this section and is subject to the
205 penalties set forth in subsection (b) of section 53a-128i. A [credit]
206 payment card is "incomplete" if part of the matter other than the
207 signature of the cardholder, which an issuer, or any issuer in a group

208 of issuers utilizing a common distinctive element or elements in
 209 [credit] payment cards issued by all members of such group, requires
 210 to appear on the [credit] payment card, before it can be used by a
 211 cardholder, has not yet been stamped, embossed, imprinted or written
 212 on it. A "distinctive element" of a [credit] payment card is any material
 213 or component used in the fabrication of [credit] payment cards, which,
 214 by virtue of such element's chemical or physical composition, color or
 215 design, is unique to the [credit] payment cards issued by a particular
 216 issuer or group of issuers utilizing a common distinctive element or
 217 elements in [credit] payment cards issued by all members of such
 218 group.

219 Sec. 7. (NEW) (*Effective from passage*) Any person who formerly held
 220 a mortgage on property, on which a final judgment of foreclosure has
 221 been entered, who continues to collect rental payments on such
 222 property after the final judgment of foreclosure shall be subject to the
 223 penalties for larceny under sections 53a-122 to 53a-125b, inclusive, of
 224 the general statutes depending on the amount involved.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	53a-128a
Sec. 2	<i>from passage</i>	53a-128b
Sec. 3	<i>from passage</i>	53a-128c
Sec. 4	<i>from passage</i>	53a-128d
Sec. 5	<i>from passage</i>	53a-128e
Sec. 6	<i>from passage</i>	53a-128f
Sec. 7	<i>from passage</i>	New section

BA *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 17 \$	FY 18 \$
Judicial Dept. (Probation); Correction, Dept.	GF - Potential Cost	See Below	See Below
Banking Dept.; Resources of the General Fund	GF - Potential Revenue Gain	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a cost by expanding credit card crimes to include debit cards and adds a crime to the larceny statutes. To the extent that offenders are prosecuted for new or expanded offenses under this bill, potential costs for incarceration or probation supervision in the community, or judicial revenue would result. On average, it costs the state \$7,260 (including benefits) to supervise an inmate in the community as opposed to \$61,320 (including benefits) to incarcerate an offender. Currently there are 10 inmates incarcerated for various credit card related crimes and 512 incarcerated for various larceny statutes.

The bill also results in a potential revenue gain from criminal fines. In FY 15 there were 22 credit card related offenses that resulted in \$26,300 in fines and 439 larceny offenses that resulted in \$125,000 in fines.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: *Department of Correction Summary of Offenders by Controlling Offense, as of 2/21/2016*
Judicial Department Offenses and Revenue Database

OLR Bill Analysis**sHB 5295*****AN ACT CONCERNING DEBIT CARD FRAUD AND PENALTIES FOR COLLECTION OF RENTAL PAYMENTS ON FORECLOSED PROPERTY.*****SUMMARY:**

This bill expands credit card crimes to cover crimes involving debit cards. It defines a debit card as any card, code, device, or other means of access, or combination of them that (1) is issued or authorized for use to debit an asset account held directly or indirectly by a financial institution and (2) the cardholder may use to obtain money, goods, services, or anything of value. It does not have to be called a debit card; specifically includes payroll and ATM cards; and excludes check, draft, or similar paper instruments and their electronic representations. The bill also makes a change about notice of a card's revocation for purposes of these crimes.

The bill also makes it a form of larceny for a person who formerly held a mortgage on property for which a final foreclosure judgment has been entered to continue to collect rent after the final judgment. Generally, larceny crimes punish someone who wrongfully takes property from its owner, intending to deprive another of the property or appropriate it to someone else. The penalty for larceny varies based on the amount of property taken, from a class C misdemeanor (punishable by up to three months in prison, a fine of up to \$500, or both) to a class B felony (punishable by up to 20 years in prison, a fine of up to \$15,000, or both).

EFFECTIVE DATE: Upon passage

CREDIT AND DEBIT CARD CRIMES

The bill expands the credit card crimes described in Table 1 to also

cover the same conduct involving debit cards.

Table 1: Credit Card Crimes Expanded by the Bill to Cover Debit Cards

Citation	Conduct	Penalty
53a-128b	Knowingly making a false statement in writing, with the intent that it be relied on, about a person's identity or financial condition to procure a card	Class A misdemeanor (punishable by up to one year in prison, a fine of up to \$2,000, or both)
53a-128c(a)	Taking a card from someone without the cardholder's or issuer's consent or receiving a card knowing it was taken without consent and with intent to use, sell, or transfer it to another	Class A misdemeanor
53a-128c(b)	Receiving a card knowing it is lost, mislaid, or delivered by mistake and keeping it with intent to use, sell, or transfer it to someone	Class A misdemeanor
53a-128c(c)	Non-issuer selling a card or anyone buying a card from someone other than an issuer	Class A misdemeanor
53a-128c(d)	Obtaining control over a card as security for a debt, intending to defraud the issuer; participating party; someone providing money, goods, services, or anything of value; or anyone else	Class A misdemeanor
53a-128c(e)	Non-issuer, during a 12-month period, receiving cards issued in the names of at least two people that the person has reason to know were taken or kept under circumstances that amount to card theft or certain other card crimes	Class D felony (punishable by up to five years in prison, a fine of up to \$5,000, or both)
53a-128c(f)	Falsely making or embossing a card intending to defraud a purported issuer; participating party; someone providing money, goods, services, or anything of value; or anyone else	Class D felony
53a-128c(g)	Someone other than a cardholder or authorized person signing a card with intent to defraud an issuer; participating party; someone providing money, goods, services, or anything of value; or anyone else	Class A misdemeanor

53a-128d	<p>With intent to defraud an issuer; participating party; someone providing money, goods, services, or anything of value; or anyone else:</p> <ol style="list-style-type: none"> 1. using a card obtained or retained through false statements to obtain money, goods, services, or anything of value; 2. obtaining money, goods, services, or anything of value by representing without the cardholder's consent that he or she is the cardholder and the card has not in fact been issued; or 3. using a card obtained or retained in various illegal ways or which he or she know is forged, expired, or revoked, as authority or identification to cash, attempt to cash, negotiate, or transfer a check or other order for money that would violate checking laws 	<p>If value of money or property illegally obtained within six months is up to \$500: Class A misdemeanor</p> <p>If value exceeds \$500 within six months: Class D felony</p>
53a-128e(a)	<p>Person authorized by the card issuer or participating party to furnish money, goods, services, or anything of value upon the appropriate presentation of a card, who furnishes the item (1) when presented with a card obtained by theft or certain other illegal means or which the person knows is forged, expired, or revoked and (2) intending to defraud the issuer, participating party, cardholder, or someone else</p>	<p>If value of money or property illegally obtained within six months is up to \$500: Class A misdemeanor</p> <p>If value exceeds \$500 within six months: Class D felony</p>
53a-128e(b)	<p>Person authorized by the card issuer or participating party to furnish money, goods, services, or anything of value upon the appropriate presentation of a card who (1) does not furnish the item; (2) represents in writing to the issuer or participating party that he or she provided the item; and (3) intends to defraud the issuer, participating party, cardholder, or someone else</p>	<p>If difference in value of money or property furnished exceeds the value represented, within six months, is up to \$500: Class A misdemeanor</p> <p>If value exceeds \$500 within six months: Class D felony</p>
53a-128f	<p>Someone, other than cardholder, possessing or controlling at least two incomplete cards or purported distinctive elements of a card, intending to complete or use them to produce cards without the</p>	<p>Class D felony</p>

	<p>issuer's consent</p> <p>Person, knowing their character, possessing or controlling a distinctive element of a card or machinery, plates, or items designed to produce instruments purporting to be cards when the issuer has not consented to it</p>	
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For all of these crimes, the bill also expands who is considered a “cardholder.” By law, a cardholder is the person named on the card to whom or for whose benefit the card is issued by an issuer. The bill also includes a person who lawfully acquired the card if the card does not have a person’s name on its face.

Some of the crimes described above (see CGS § 53a-128d) punish actions taken with a revoked card. The law presumes knowledge of a card’s revocation four days after notice of it is mailed to the cardholder at his or her address on the card or last known address. The bill no longer requires mailing by registered or certified mail, return receipt requested, or by airmail if the address is more than 500 miles away. By law, notice is presumed received 10 days after mailing by registered or certified mail if the address is outside the U.S., Puerto Rico, the Virgin Islands, the Canal Zone, or Canada.

Digital Wallets

The bill expands the false statement crime described above to include false statements to procure the loading of a payment card (credit or debit card) into a digital wallet (§ 2). By law, this crime is a class A misdemeanor.

The bill also makes it a crime to falsely load or cause false loading of a payment card into a digital wallet, with intent to defraud a purported issuer; participating party; person providing goods, services, or something of value; or anyone else. The bill makes this a class D felony (§ 3, see (f)).

The bill defines a digital wallet as a software application used on a

computer or other device, including a mobile device, to store digital forms of a payment card that can be used to obtain money, goods, services, or anything of value.

COMMITTEE ACTION

Banking Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/15/2016)